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| APPLICATION NO.      | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|----------------------|-------------|-----------------------|-------------------------|------------------|
| 09/837,562           | 04/19/2001  | Edward Larry McCleary | 12439.101B              | 7515             |
| 24283                | 7590        | 12/16/2003            | EXAMINER                |                  |
| PATTON BOGGS         |             |                       | MCINTOSH III, TRAVISS C |                  |
| PO BOX 270930        |             |                       | ART UNIT                |                  |
| LOUISVILLE, CO 80027 |             |                       | PAPER NUMBER            |                  |

1623

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/837,562

Applicant(s)

MCCLEARY, EDWARD LARRY

Examiner

Traviss C McIntosh

Art Unit

1623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): 112 2<sup>nd</sup> paragraph rejections.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

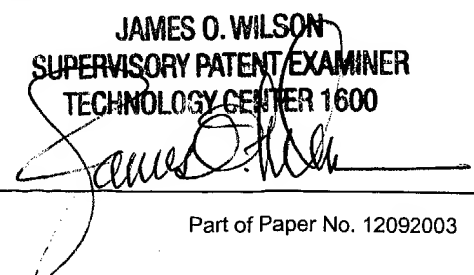
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1,24 and 53-64.Claim(s) withdrawn from consideration: 2-23, and 25-52.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attachment

JAMES O. WILSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600



**Attachment**

In response to the after final amendment filed October 28, 2003, the examiner would like to note that the breadth of the claims where applicant correlates mechanisms and pathways common to impaired or deteriorating neurological function is not convincing. The record does not support direct correlations between said mechanisms and pathways to impaired or deteriorating neurological function. The declaration filed under 37 CFR 1.132 has been carefully considered, however, it is deficient in presenting facts or evidence to overcome the prima facie case of lack of enablement instantly asserted. In the absence of sufficient nomenclatorially/formulaically/structurally identities for the components of the composition to be used as active agents in the methods, applicants should claim the combinations of components sufficiently and distinctly as particularly described to be efficacious in treating the specific neurological functions for which there can be found support in the specification.